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**UNITED STATES DISTRICT COURT IN AND FOR
THE WESTERN DISTRICT OF WASHINGTON IN SEATTLE**

DONNITTA SINCLAIR, mother of
deceased HORACE LORENZO
ANDERSON, JR., individually,
Plaintiff,

Vs.

CITY OF SEATTLE, a municipality,
Defendant.

No. 2:21-cv-00571

PLAINTIFF'S OBJECTIONS TO
REPORT AND RECOMMENDATION

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Pursuant to 28 U.S.C. § 636(b)(1), Plaintiff respectfully makes the following objections to the Report and Recommendation entered in this matter on September 21, 2021 See Dkt. 25. For the reasons stated below, the Report should not be followed, and this case should not be dismissed.

INTRODUCTION

Defendant City of Seattle affirmatively abandoned a section of the city and deprived citizens of police protection. This extraordinary decision created an area that became nationally known as the Capitol Hill Occupied Protest or "CHOP."

The Defendant enabled, encouraged, and extended CHOP. Aware of the dangers of creating a "no-cop zone," City officials nonetheless lured visitors, including Lorenzo

Anderson, a special needs teenager, into the area by referring to it as “a block party” and “summer of love.” Anderson was shot and killed in the CHOP.

While government entities are not generally liable for criminal acts of third parties, there are exceptions to the rule. This case meets the requirements of the “state-created danger” exception.

LEGAL STANDARD

This Court’s review is *de novo*. See 28 U.S.C. § 636(b)(1) “A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”

OBJECTIONS

I. DEFENDANTS’ MOTION TO DISMISS SHOULD BE DENIED

The Report concludes that Plaintiff’s claim fails because the danger created by the Defendant was not specific to Anderson. See Dkt. 25, Report and Recommendation at 6 and 9.

State-created danger case law generally involves scenarios where individuals or groups were specifically targeted by state actors. However, specificity, at least not the rigid type contemplated in the Magistrate’s report, is not required. Such a narrow reading would be bad public policy allowing the state to create dangerous situations for the public, including particularly vulnerable members, with no legal consequences.

A. Defendant put Mr. Anderson in Actual and Particular Danger

When the city established and affirmatively enabled a “no-cop zone” in an urban area, this created an obvious danger. Further, the city invited the public into the area by deceptively referring to it as a “block party” and “summer of love.” Anderson, a special needs teenager, was particularly vulnerable to the lure.

Our law is clear the state is liable if the state actor has “thrown” a victim into a “snake pit,” to use Judge Posner’s often-cited metaphor for state-created danger. *Bowers v. Devito*, 686 F.2d 616 at 618 (7th Cir. 1982). Though throwing a victim and luring a victim

1 is technically a different act, the result to the victim is the same, and the law should be
2 the same.

3 **B. Defendant Demonstrated Deliberate Indifference**

4 Defendant knew a “no-cop” or “no response” zone presented a danger. To show
5 deliberate indifference, all Plaintiff must plausibly allege is the Defendant “disregarded a
6 known or obvious consequence” of the state action. *Martinez v. City of Clovis*, 943 F.3d
7 1260, 1274 (9th Cir. 2019). The law allows courts to apply common sense to infer this
8 indifference. “[T]he inherent danger facing a woman left alone at night in an unsafe area
9 is a matter of common sense.” *Wood v. Ostrander*, 879 F.2d 583, at 1219 (9th Cir. 1989).

10 The Report suggests Defendant did not demonstrate deliberate indifference as
11 Defendant “did not cut off essential services because SPD had a policy of entering the
12 area for ‘life-threatening crime’ and had an ambulance ‘standing by about a block and a
13 half away.’” See Dkt. 25, Report and Recommendation at 8. The fact remains, for
14 purposes of a 12(b)(6) motion, that Defendant was deliberately indifferent to the danger
15 of a “no-cop” zone in an urban area. A stated policy of entering the area only for “life-
16 threatening” crimes – *e.g. after a victim is shot multiple times* – and having an ambulance
17 stand by to cope with the foreseeable violence does not mitigate the indifference.

18 **CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully objects to the Magistrate Judge’s
20 Report and Recommendation. In the interest of justice and public policy, Defendant’s
21 Motions to Dismiss should be denied.

22 Dated this 4th day of October, 2021.

23 **HERRMANN LAW GROUP**

24 /s/ Mark Lindquist

25 _____
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